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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 GOOGLE LLC,

13 Plaintiff,

14 vs.

15 SONOS, INC.,

16 Defendant.

CASE NO. 3:20-cv-06754-WHA

Related to CASE NO. 3:21-cv-07559-WHA

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
PORTIONS OF ITS REPLY IN SUPPORT
OF ITS MOTION FOR SUMMARY
JUDGMENT PURSUANT TO THE
COURT'S PATENT SHOWDOWN
PROCEDURE**

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Plaintiff Google LLC (“Google”) hereby requests to file under seal portions of its Reply in Support of its Motion for Summary Judgment Pursuant to the Court’s Patent Showdown Procedure (“Reply”). Specifically, Google requests an order granting leave to file under seal the portions of the documents listed below:

| Document | Portions to Be Filed Under Seal | Designating Party |
|---|---------------------------------|-------------------|
| Google’s Reply | Portions highlighted in yellow | Google |
| Exhibit 1 to Declaration of Nima Hefazi in Support of Google’s Reply (“Hefazi Decl.”) | Portions highlighted in yellow | Google |
| Exhibit 2 to Hefazi Decl. | Entire Document | Google |
| Exhibit 3 to Hefazi Decl. | Entire Document | Google |
| Exhibit 4 to Hefazi Decl. | Entire Document | Google |
| Exhibit 7 to Hefazi Decl. | Entire Document | Google |

II. LEGAL STANDARD

Civil Local Rule 79-5(c) provides that a party seeking to file its own documents under seal must file an administrative motion that articulates the applicable legal standard and reasons for keeping a document under seal, includes evidentiary support from a declaration where necessary, and provides a proposed order that is narrowly tailored to seal only the sealable material.

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mutual Auto. Insurance Company*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

1 The Ninth Circuit has recognized that two different standards may apply to a request to seal
 2 a document – namely the “compelling reasons” standard or the “good cause” standard. *Blessing v.*
 3 *Plex Sys., Inc.*, No. 21-CV-05951-PJH, 2021 WL 6064006, at *12 (N.D. Cal. Dec. 22, 2021) (citing
 4 *Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016)). The
 5 compelling reasons standard applies to any sealing request made in connection with a motion that
 6 is “more than tangentially related to the merits of a case.” *Id.* Accordingly, courts in this district
 7 apply a “compelling reasons” standard to a sealing request made in connection with a motion for
 8 summary judgment. *See, e.g., Edwards Lifesciences Corp. v. Meril Life Scis. Pvt. Ltd.*, No. 19-CV-
 9 06593-HSG, 2021 WL 5233129, at *4 (N.D. Cal. Nov. 10, 2021); *Baird v. BlackRock Institutional*
 10 *Tr. Co., N.A.*, No. 17-CV-01892-HSG, 2021 WL 105619, at *5 (N.D. Cal. Jan. 12, 2021).

11 **III. THE COURT SHOULD SEAL GOOGLE’S CONFIDENTIAL INFORMATION**

12 Material that is confidential and could harm a litigant’s competitive standing if disclosed
 13 may be sealed under the compelling reasons standard. *Icon-IP Pty Ltd. v. Specialized Bicycle*
 14 *Components, Inc.*, No. 12-cv-03844-JST2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015)
 15 (information “is appropriately sealable under the ‘compelling reasons’ standard where that
 16 information could be used to the company’s competitive disadvantage”); *In re Qualcomm Litig.*,
 17 No. 3:17-CV-0108-GPC-MDD, 2017 WL 5176922, at *2 (S.D. Cal. Nov. 8, 2017) (concluding that
 18 “compelling reasons exist to seal . . . information subject to confidentiality and non-disclosure
 19 provisions” because “[s]uch insight could harm the parties in future negotiations with existing
 20 customers, third-parties, and other entities with whom they do business”).

21 Portions of Google’s Reply and Exhibit 1 as well as Exhibits 2, 3, 4, and 7 contain source
 22 code, confidential information, and trade secrets regarding highly sensitive features of Google’s
 23 products. Specifically, these documents detail the operation and system design of Google products
 24 and functionalities that Sonos accuses of infringement. Public disclosure of these documents would
 25 harm the competitive standing Google has earned through years of innovation and careful
 26 deliberation by revealing sensitive aspects of Google’s proprietary systems, strategies, designs, and
 27 practices to Google’s competitors. Hefazi Decl. ¶ 4. A less restrictive alternative than sealing these
 28 documents would not be sufficient because the information sought to be sealed is Google’s

1 proprietary and confidential business information but is integral to Google's Reply. *Id.* Thus,
 2 Google has compelling reasons to keep such information under seal. *See Delphix Corp. v. Actifo,*
 3 *Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014) (finding
 4 compelling reasons to seal where court filings contained "highly sensitive information regarding [an
 5 entity's confidential] product architecture and development"); *Guzik Tech. Enterprises, Inc. v. W.*
 6 *Digital Corp.*, No. 5:11-CV-03786-PSG, 2013 WL 6199629, at *4 (N.D. Cal. Nov. 27, 2013)
 7 (sealing exhibit containing "significant references to and discussion regarding the technical
 8 features" of a litigant's products).

9 **IV. CONCLUSION**

10 For the foregoing reasons, Google respectfully requests that the Court grant Google's
 11 Administrative Motion to File Under Seal Portions of its Reply in Support of its Motion for
 12 Summary Judgment Pursuant to the Court's Patent Showdown Procedure.

13 DATED: May 19, 2022

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ATTESTATION

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that, on May 19, 2022, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system and email.

DATED: May 19, 2022

By: /s/ Charles K. Verhoeven
Charles K. Verhoeven